

Service Provider:

Project #:

Project Name:

**THIS AGREEMENT** made this \_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_

**BETWEEN**

\_\_\_\_\_  
*(hereinafter known as the Contractor)*

**AND**

\_\_\_\_\_  
*(hereinafter known as the Service Provider)*

**THE CONTRACTOR** has entered into an agreement *(hereinafter called the "Prime Contract")* dated the  
day of \_\_\_\_\_, with \_\_\_\_\_

\_\_\_\_\_  
*(hereinafter called "the Owner")*

for the construction of \_\_\_\_\_

\_\_\_\_\_  
*(hereinafter called "the Project")*

**BACKGROUND**

A. The Prime Contract includes the services to be performed under this Agreement (hereinafter called the "Subcontract").

B. The Service Provider has agreed with the Contractor to be bound by all of the terms and conditions of the Prime Contract that are governed by the plans, specifications, general and supplementary conditions and addenda for the Project.

The Contractor and the Service Provider agree as follows:

**ARTICLE 1 - The Services**

The Service Provider shall perform the services set out in Appendix A (the "Services") in respect to the Project at and for the Subcontract Price identified in Article 2 and as detailed in Appendix A, and in accordance with the Contractor's schedule (the "Schedule") which is incorporated herein by reference.

**ARTICLE 2 - Subcontract Price**

The Subcontract Price is \$ \_\_\_\_\_ dollars in Canadian Funds exclusive of any value added tax ("VAT", which shall include but not be limited to the Goods and Services Tax or the Harmonized Sales Tax as applicable under the Excise Tax Act) and inclusive of all other federal and provincial taxes of any kind whatsoever, and the Subcontract Price shall be subject to adjustment by the amount of any increase or decrease in cost to the Service Provider due to changes to such included taxes arising after the time of bid closing. The Subcontract amount will be adjusted based on approved quantities and unit prices for all unit price items.

**ARTICLE 3 - Surety Bonds/Service Provider Performance Security**

The Service Provider agrees to provide the following surety bonds and/or Service Provider Performance Security in a form designated by the Contractor, naming the Contractor as obligee or beneficiary, as the case may be:

**ARTICLE 4 - Payment**

The Contractor agrees to pay the Service Provider for performance of the Subcontract as follows:

- (a) The Service Provider shall submit proper progress claims acceptable to the Contractor on or before the 20th day of each month for certification of services performed up to such date.
- (b) Payments will be made monthly on progress claims as certified covering the services performed by the Service Provider plus the applicable VAT, such payments to be made within ten (10) days after the Contractor has received payment from the Owner.

Service Provider:

Project #:

Project Name:

- (c) Notwithstanding paragraph (b) above, if the Owner fails to make payment to the Contractor when due in accordance with the terms of the Prime Contract, the associated payment to the Service Provider will become due sixty (60) days after payment was otherwise due to the Contractor from the Owner.
- (d) The Service Provider agrees that, if the Owner does not pay the Contractor for reasons of the Owner's insolvency or for reasons relating to the non-performance by the Service Provider, then, notwithstanding the provisions of paragraph (c) of this Article 4, the Contractor shall not be obligated to pay to the Service Provider the associated payment.

**ARTICLE 5 - Contract Documents**

The Service Provider agrees to be bound by all of the terms and conditions of the Prime Contract, including all plans, specifications, general and supplementary conditions and addenda thereto, and in construing the Service Provider's obligations under the Prime Contract, terms denoting "Owner" will be read as "Contractor" and the terms denoting "Contractor" will be read as the term "Service Provider". The terms and conditions of the Prime Contract and the plans, specifications, general and supplementary conditions and addenda of the Prime Contract, and the Subcontract Terms and Conditions and any appendices attached hereto and the Schedule as herein provided for shall form part of this Subcontract and the whole shall constitute the entire Subcontract between the parties and the same are hereinafter referred to as the "Contract Documents".

**ARTICLE 6 - Schedule**

The Service Provider will begin the Services upon award of the Subcontract and will perform its obligations hereunder to complete the Services in accordance with the Schedule and so as not to interfere with or delay the work of the Contractor or any other subcontractor. The Contractor may amend the Schedule in consultation with the Service Provider and the Service Provider agrees it shall provide the Services in accordance with such revised Schedule, including any changes to the order and sequencing of the Services. If the Service Provider fails to perform in accordance with the Schedule as may be amended from time to time, and by reason thereof, the Contractor becomes liable for damages or suffers losses, or incurs additional costs because of non-performance of the Service Provider, the Service Provider shall be liable to the Contractor for such damages, losses and costs.

**ARTICLE 7 - Notices and Contractor's Representative**

Addresses for notices for the parties under this Subcontract are:

Contractor: \_\_\_\_\_

Contractor's Representative: \_\_\_\_\_

Service Provider: \_\_\_\_\_

The Service Provider shall provide notice in writing to the Contractor of any claim for an adjustment of the Subcontract Price and/or extension of time to complete the Work, such notice to be provided within the earlier of (a) five (5) business days following when the Service Provider knew or ought to have known of the event or circumstance giving rise to the Service Provider's claim or (b) two (2) business days prior to the expiration of such notice period prescribed by the Prime Contract for notice by the Contractor of such a claim. The Service Provider shall provide such written notice prior to performing any work that is the subject of such claim. The Service Provider's notice shall contain detailed particulars of the basis of such claim and the specific relief sought and must be delivered to the Contractor's Representative. The Service Provider's strict compliance with the provisions of this Article shall be a condition precedent to any claim for an adjustment of the Subcontract Price or extension of time to complete the Work. The Service Provider acknowledges its non-adherence to this Article may prejudice the Contractor's ability to mitigate or seek relief under the Prime Contract and as such the Service Provider assumes the risk of its non-adherence to these provisions.

Where the Service Provider has provided notice of a claim relating to or arising from acts or omissions of the Owner or those in law for whom it is responsible, the Service Provider's entitlement to relief, including an adjustment of the Subcontract Price or an extension of time, shall be conditional upon the Contractor's recovery of such relief under the Prime Contract.



**PROFESSIONAL SERVICES  
SUBCONTRACT #**

Service Provider:

Project #:

Project Name:

The parties hereto have executed this Agreement including the Terms and Conditions annexed hereto, on the date stated on the first page.

by its general partner,

\_\_\_\_\_  
CONTRACTOR (Legal Name)

\_\_\_\_\_  
SERVICE PROVIDER (Legal Name)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name and Title of Authorized Signatory)

\_\_\_\_\_  
(Name and Title of Authorized Signatory)

Draft

**TABLE OF CONTENTS**

1.	<u>PRECEDENCE</u> .....	2
2.	<u>REGULATIONS, LAWS, PERMITS, ETC.</u> .....	2
3.	<u>INSTRUCTIONS AND DECISIONS</u> .....	2
4.	<u>CHANGES TO THE SERVICES</u> .....	2
5.	<u>EMERGENCIES</u> .....	2
6.	<u>PROTECTION OF THE PROJECT AND PROPERTY</u> .....	2
7.	<u>PERFORMANCE OF SERVICES</u> .....	3
8.	<u>PERFORMANCE SECURITY</u> .....	3
9.	<u>INSURANCE</u> .....	3
10.	<u>INDEMNIFICATION</u> .....	4
11.	<u>DEFAULT AND TERMINATION</u> .....	4
12.	<u>SERVICE PROVIDER'S RIGHT TO SUSPEND SERVICES OR TERMINATE SUBCONTRACT</u> .....	5
13.	<u>ASSIGNMENT</u> .....	5
14.	<u>INSOLVENCY AND BANKRUPTCY</u> .....	5
15.	<u>PAYMENT OF BILLS</u> .....	6
16.	<u>SETOFF</u> .....	6
17.	<u>DISPUTES</u> .....	6
18.	<u>SAFETY</u> .....	7
19.	<u>THIRD PARTY INTELLECTUAL PROPERTY</u> .....	8
20.	<u>NON-MERGER OF REMEDIES</u> .....	8
21.	<u>ENTIRE AGREEMENT</u> .....	8
22.	<u>ENUREMENT</u> .....	8
23.	<u>QUALITY</u> .....	8
24.	<u>DOCUMENT CONTROL</u> .....	9
25.	<u>BUSINESS ETHICS</u> .....	9

1. **PRECEDENCE.**

In the event of any discrepancy between the various documents constituting the Contract Documents, the document imposing the higher or more restrictive standard upon the Service Provider shall prevail.

2. **REGULATIONS, LAWS, PERMITS, ETC.**

The laws of the jurisdiction where the Project is located shall govern the Services. In the performance of the Services, the Service Provider shall comply with all laws, statutes, regulations, ordinances, judgments, standards and codes which are or come into force during the performance of the Service and which relate thereto. Unless otherwise stipulated the Contractor shall obtain the building permit. The Service Provider shall obtain all other permits, licenses and certificates relative to the Services.

3. **INSTRUCTIONS AND DECISIONS.**

The Service Provider will carry out the instructions of the Contractor's Representative relative to the Services. Should the Service Provider hold such instructions to be at variance with this Subcontract, or to involve Changes to the Services whether or not it has been performed, or to be given in error, the Service Provider shall notify the Contractor before proceeding to carry them out in accordance with the provisions of Section 4 of these Terms and Conditions. Absent such prior notification, subsequent services done by the Service Provider will be at its own risk. If the Contractor and the Service Provider fail to reach agreement with respect to any such instruction and the Contractor directs to have such instruction carried out, the Service Provider shall comply with such instruction without delay. Any unresolved difference of cost and/or time resulting from any such instruction shall be resolved in accordance with the dispute resolution provisions of this Subcontract.

4. **CHANGES.**

The Service Provider shall not make any changes to the scope of the Services without the prior written consent of the Contractor's Representative and will perform any changes issued pursuant to the Prime Contract in accordance with the terms set out therein. To the extent the Service Provider believes it has received instructions which constitute a bona fide change in the Services, the Service Provider will provide written notice to the Contractor in accordance with this Subcontract. The Contractor will be under no obligation to submit change requests on the Service Provider's behalf to the extent they lack sufficient particulars or back-up or otherwise lack merit. Additionally, the Contractor may, by notice in writing, order or propose changes to the Services, including additions or deletions thereto. If the Contractor proposes changes to the Services, the Service Provider shall promptly provide the Contractor with its estimate of the total cost of such change together with the impact upon the Schedule, whereupon, if the Contractor and the Service Provider so agree, the Contractor shall issue a Change Order for such proposed service. If the Parties do not agree or the Service Provider does not provide the Contractor with its estimate within a time frame required by the Contractor or if the Contractor otherwise orders a change to the Services, the Contractor may by issuance of a Change Directive require the Service Provider to abide by such Change Directive. The issuance of a Change Order or Change Directive will not invalidate this Subcontract and in the event of a dispute arising therefrom, such disputes will be resolved in accordance with the dispute resolution provisions of this Subcontract.

5. **EMERGENCIES.**

The Service Provider acknowledges that the Contractor and the Owner have authority in an emergency to stop the progress of the Services whenever, in its opinion, such stoppage may be necessary to protect the health and safety of any person, the environment or any part of the Project, or any neighbouring property. Where such stoppage is made necessary by acts or omissions of the Service Provider, any costs for such stoppage will be to the Service Provider's account.

6. **PROTECTION OF THE PROJECT AND PROPERTY AND RISK OF LOSS.**

The Service Provider shall protect all of the Services against damage, and shall not cause damage to the Project or property of others. In the event the Service Provider damages the Project or property of others, it shall indemnify and hold harmless the Contractor from all claims, losses, costs, damages and expenses arising from such damage and the Contractor shall have authority to assess all such damages and may deduct the cost thereof from payment then or thereafter due to the Service Provider.

Title to services shall vest with the Contractor the earliest of: (i) the date the services are provided; (ii) the date the Contractor pays for the services or a portion thereof; or (iii) the date stipulated in the Prime Contract for passage of title of services to the Owner.

7. **PERFORMANCE OF SERVICES.**

The Service Provider will perform the Services in accordance with the Contract Documents and with the skill, diligence, timeliness and competence of similar professionals. No payment to the Service Provider shall be construed as an acceptance of any services not so performed.

**8. PERFORMANCE SECURITY.**

The Service Provider, before starting the work, must deliver the Service Provider performance security in a form designated by the Contractor and must maintain same in good standing until completion of this Subcontract, including the discharge of all warranty obligations. Unless the Contractor specifically directs otherwise, the cost of the Service Provider performance security shall be borne by the Service Provider, who shall promptly provide proof of payment for such performance security when requested by the Contractor.

**9. INSURANCE.**

- (a) The Service Provider shall, without limiting its obligations or liabilities as stated elsewhere in this Subcontract, obtain and continuously maintain at its own expense and cost, the following insurance coverages:
- (i) Workers' Compensation insurance covering all employees, partners and directors engaged in performing the Services in accordance with the statutory requirements of the Province or Territory having jurisdiction over such employees;
  - (ii) General Liability insurance, including coverage for completed operations hazards;
  - (iii) Automobile Liability insurance covering all owned and non-owned motor vehicles operated or used by the Service Provider in the performance of the Services;
  - (iv) If watercraft or aircraft are used or operated by the Service Provider in performing the Services, Watercraft and Aircraft Liability insurance;
  - (v) Errors and Omissions Insurance covering the Service Provider's professional liability; and
  - (vi) Such other insurance that may be deemed required by the Owner or Contractor.
- (b) The minimum limits of insurance to be provided by the Service Provider under Section 9 (a) (ii), (iii) and (iv) shall be the greater of the corresponding limits required under the Prime Contract and \$5,000,000 per occurrence. Such insurance shall be maintained for at least two (2) years following completion of the Project and for the insurance required under Section 9 (a) (ii), for six (6) years with respect to the completed operations hazards.
- (c) The minimum limit of insurance to be provided by the Service Provider under Section 9 (a) (v) shall be the greater of the corresponding limit required under the Prime Contract and \$2,000,000 per claim. Such insurance shall be maintained for at least two (2) years following completion of the Project.
- (d) The Service Provider's General Liability Insurance shall name both the Contractor and Owner as additional insureds with respect to liability arising out of the operations of the Service Provider in performing this Subcontract and shall provide that the insurer shall waive any right of subrogation against the Contractor and the Owner.
- (e) On projects where the Owner or the Contractor provide Course of Construction and/or Wrap-Up Liability insurance, such insurance will be subject to deductibles. The applicable deductible shall be the obligation of the party causing the damage or injury. In the case of Course of Construction losses, if no responsible party can be established, the deductible shall be borne by the party or parties whose work has been damaged in proportion to such damage. If the Contractor is providing Course of Construction and/or Wrap-Up Liability insurance, the applicable deductible shall not be less than \$25,000 per loss. It is the responsibility of the Service Provider to satisfy itself as to the adequacy of such insurance.
- (f) Prior to the performance of the Services and upon request by the Contractor during the performance of the Services, the Service Provider shall provide to the Contractor a certificate of insurance in respect of the required insurance coverages (or a certified copy of the entire policy or policies, if so requested), and a clearance certificate or similar instrument of the relevant Workers Compensation authority or authorities. The insurer(s) shall provide thirty (30) days prior written notice of cancellation to the Contractor and the Owner of the coverage required under Section 9 (a) (ii), (iii), (iv), (v) and (vi).
- (g) The Service Provider shall indemnify and hold harmless the Contractor from any claims, demands, losses, costs, damages, actions, suits or proceedings arising from the Service Provider's failure to obtain the insurances required hereunder.

**10. INDEMNIFICATION.**

The Service Provider shall indemnify and hold harmless the Contractor, its agents, employees, affiliates, directors and officers from and against any and all claims, demands, losses, costs, damages, actions, suits or proceedings by third parties ("Third Party Liabilities") that arise out of or are attributable to the Service Provider's negligent performance of the Subcontract, providing that such Third Party Liabilities are caused by acts or omissions of the Service Provider or anyone else for whom the Service Provider may be liable.

**11. DEFAULT AND TERMINATION.**

(a) The Service Provider shall be in default of this Subcontract if the Service Provider:

- (i) Is adjudged bankrupt, or is unable to meet its financial obligations as they become due, or makes a general assignment for the benefit of creditors, or if a receiver is appointed, or if a creditor takes possession of any of the Service Provider's property, or if a distress, execution or similar process is commenced against such property;
- (ii) Fails to perform the Services in accordance with the Schedule;
- (iii) Fails to perform the Services in accordance with the requirements of the Contract Documents;
- (iv) Abandons the Services;
- (v) Fails to maintain the insurance or performance security required to be maintained hereunder;
- (vi) Fails to pay its sub-subcontractors, suppliers and employees performing the Services all amounts due and owing;
- (vii) Breaches or disregards occupational health and safety laws and regulations or the HSEMS;
- (viii) Makes a material misrepresentation to the Contractor;
- (ix) Fails to supply sufficient skilled and competent workers to perform the Services;
- (x) Fails to pay any amount due to the contractor pursuant to any adjudication, arbitration, litigation or other binding dispute resolution; or
- (xi) Otherwise breaches, or is reasonably likely to breach, a material provision of the Subcontract;

and in the case of the circumstances described in Section 11 (a) (ii) - (vii), and (ix) to (xi), the Service Provider may remedy such default within three (3) days of being notified thereof, or in the case where such default cannot reasonably be remedied within three (3) days, provided the Contractor is not materially prejudiced by such continuing default, the Contractor may in its sole discretion request a rectification plan. Where so requested, the Service Provider shall provide a comprehensive and substantive rectification plan within the time frame required by the Contractor. If the rectification plan is accepted by the Contractor (such acceptance being within sole discretion of the Contractor), the Service Provider shall diligently implement such plan so as to remedy the default. Should the Service Provider fail to diligently implement the Contractor-accepted rectification plan, the Contractor shall advise the Service Provider that its default remains unremedied, whereupon the Contractor may exercise the remedies under Section 11(b).

(b) Upon the Service Provider's unremedied or irremediable default and without prejudice to any other rights and remedies the Contractor may have, the Contractor may, upon written notice to the Service Provider:

- (i) Correct such default and deduct the cost thereof from any payment then or thereafter due to the Service Provider and any remaining cost due shall remain the liability of the Service Provider; and/or
- (ii) Terminate the Service Provider's right to continue with the Services in whole or in part.

(c) If the Contractor terminates the Service Provider's right to continue with the Services, the Contractor shall be entitled to:

- (i) Take possession of the work product from the Services and, where the Contractor has made a good-faith determination that its use is necessary for the timely completion of the Services, utilize this work product on the Project, subject to the rights of third parties, and finish the Services by whatever method the Contractor may consider expedient; and
- (ii) Charge the Service Provider the sum of:
  - 1) the cost of completing the Services;
  - 2) an estimation of the cost of corrections to the Services originally performed by the Service Provider;

- 3) the equivalent of 15% of the cost of completing the Services and performing corrections as an allowance to cover the Contractor's overhead and fees; and
  - 4) such other losses, damages, costs and expenses incurred by the Contractor by reasons of the Service Provider's default.
- (iii) Upon expiry of the warranty period, charge the Service Provider the amount by which the cost of corrections to the Services exceeds the amount estimated for such corrections, under Section 11 (c) (ii) (2), or if the cost of such correction is less than such amount, pay the Service Provider the difference.
- (d) To the extent of the Owner's right to terminate the Prime Contract for convenience or otherwise without cause, the Contractor shall have the right to terminate this Subcontract for convenience or otherwise without cause by providing the Service Provider with a written Notice of Termination, to be effective upon receipt by the Service Provider. If the Subcontract is so terminated, the Service Provider shall be paid in accordance with Article 4 - Payment, for Services duly performed up to the date of termination.
- (e) In the event of default by the Owner under the Prime Contract, the Contractor shall have the right to terminate this Subcontract by providing the Service Provider with a written Notice of Termination, to be effective upon receipt by the Service Provider. In such case, the Service Provider shall only be entitled to such payments in respect of the Services performed as the Contractor is able to secure from the Owner.

12. **SERVICE PROVIDER'S RIGHT TO SUSPEND SERVICES OR TERMINATE SUBCONTRACT.**

If the Service Provider has submitted proper progress claims on time to the Contractor and such claims are not paid when due, the Service Provider may, upon ten (10) days written notice to the Contractor, stop performance of the Services and may terminate this Subcontract thirty (30) days after giving such notice to the Contractor. The Service Provider may not terminate this Subcontract if payment of any sums overdue is made by the Contractor to the Service Provider before the expiry of the thirty (30) day notice period or if any payment is not made by the Contractor due to such payment being disputed in good faith.

13. **ASSIGNMENT.**

Subject to any provision in the Prime Contract providing for assignment of this Subcontract to the Owner in the event of the Contractor's default, neither party shall assign this Subcontract nor any part thereof without the prior written consent of the other party, except in the case of an assignment by the Contractor to an affiliate, in which case the Contractor shall provide written notice to the Service Provider and the Contractor shall remain liable for its obligations hereunder. The Service Provider will not assign payments under this Subcontract without the written consent of the Contractor, provided always, however, that the Service Provider by reason of this provision will not be precluded from assigning or pledging the benefits of this Subcontract in the normal course of business. The Service Provider agrees that the list of names of sub-subcontractors supplied prior to the signing of this Subcontract is the list of sub-subcontractors to be used to carry out those portions of the Services noted thereon and the Service Provider shall not employ any to whom the Contractor may reasonably object. No such sub-subcontracting by the Service Provider will relieve the Service Provider from any obligations under this Agreement.

14. **INSOLVENCY AND BANKRUPTCY.**

In the event of the insolvency of the Service Provider this Subcontract shall, at the option of the Contractor, cease and terminate and, in that event, the assignees or trustees in bankruptcy of the Service Provider shall not acquire any interest in or to this Subcontract but shall be paid (but in all cases subject to the terms of this Subcontract including without limitation the provisions of Section 11 hereof) only for such Services as the Service Provider has performed and been unpaid for as at the date of insolvency or bankruptcy. The Contractor's determination of the amount payable as at the date of insolvency or bankruptcy shall be conclusive.

15. **PAYMENT OF BILLS.**

The Service Provider shall promptly and satisfactorily settle and pay for all accounts or claims made by the Service Provider's employees, hires, creditors, subcontractors, permitted assigns, or anyone for whom the Service Provider has legal responsibility related to the Services. In no event will the Service Provider permit a lien or encumbrance against the Project, Project lands or any other Project assets ("Encumbrance") by any entity described in this Section 15 and in the case of the Service Provider, Encumbrances which are not bona fide. If an Encumbrance is registered, the Service Provider will, at its own expense, promptly and, in any event, no later than the time reasonably required by the Contractor, discharge such Encumbrance. Should the Service Provider fail to do so, the Contractor may discharge such Encumbrance at the Service Provider's expense and may set-off those expenses from any payments due to the Service Provider. Such expenses shall include, but are not limited to, legal costs.



**16. SETOFF.**

The Contractor is entitled to set-off against payments owing to the Service Provider where the Contractor has made, in good faith, a determination that the Service Provider is in default of its obligations under the Subcontract, and such default has caused, or is reasonably likely to cause, the Contractor, the Owner or another party working on the Project, damages because of such default. In such cases, the Contractor will set-off the amount as is reasonably necessary to maintain itself in a "no-better/no-worse" position, as if there had otherwise been no such default by the Service Provider.

**17. DISPUTES.**

In the case of any dispute arising between the Contractor and the Service Provider as to their respective rights and obligations under the Subcontract, the Contractor, in the first instance shall interpret and provide its decision in writing

Differences between the parties as to the interpretation, application or administration of the Subcontract or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by decisions of the Contractor shall be settled as follows:

- (a) The Service Provider shall be conclusively deemed to have accepted the Contractor's written decision and to have expressly waived and released the Contractor from any claims in respect of the particular matter unless within ten (10) working days after receipt of that decision, the Service Provider provides written notice to the Contractor of any dispute in respect of such decision.
- (b) The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations.
- (c) If the dispute is not resolved by negotiations, either party shall be entitled to request the use of a mediator to be appointed through mutual agreement to assist the parties to reach agreement on any unresolved dispute.
- (d) Failing agreement as to the appointment of a mediator within thirty (30) days of such dispute arising or failing resolution through mediation and subject to the Contractor's peremptory rights below, either party shall be entitled to give the other notice of a request to arbitrate.
- (e) The arbitration shall be conducted before a single arbitrator, shall take place in the jurisdiction in which the Project is situated in accordance with the National Arbitration Rules of the ADR Institute of Canada, Inc. and the decision of the arbitrator will be final and binding upon the parties. The language of the arbitration will be English.
- (f) Should any dispute or portion of any dispute between the Contractor and Service Provider relate to a dispute between the Owner and the Contractor, and where the Prime Contract contemplates dispute resolution by arbitration, the Contractor may direct that such dispute or portion thereof as between the Contractor and Service Provider be disposed of in the same arbitral proceedings, and the Service Provider agrees to such direction and joinder of proceedings. Where the Prime Contract contemplates dispute resolution by litigation, or where the Contractor otherwise notifies the Service Provider of its intention that any disputes not resolved following mediation be resolved by litigation, notwithstanding any request for arbitration issued by the Service Provider, the Contractor shall have the peremptory right to issue written notice to the Service Provider directing the waiver of arbitration proceedings hereunder, and such dispute will be resolved by litigation.
- (g) Where a dispute has arisen under the Subcontract prior to the Project achieving substantial completion of the Project (as such term, or its equivalent, is defined in the Prime Contract), the Contractor may at any time or at any stage in the dispute resolution process, deliver written notice to the Service Provider directing that the dispute resolution proceedings be suspended until following attainment of such Substantial Completion of the Project whereupon such proceedings shall be deemed stayed and the Parties shall execute such further written assurances to stay such proceedings to give effect to this provision.
- (h) The Service Provider acknowledges that notwithstanding the referral of any dispute to the procedures hereunder, it shall not be entitled to suspend or delay the performance of the Services.

**18. SAFETY.**

To the extent any of the Services are performed at, or require the Service Provider to attend at, the Project site, the Service Provider acknowledges and accepts the Contractor's health, safety and environment management system ("HSEMS") as governing the Services, which HSEMS includes, but is not limited to, Project Specific Site Safety Plans ("PSSP") and Protective and Preventative Measures ("PPM"), and the Service Provider agrees to implement and administer, and have its subcontractors implement and administer, the following procedures:

- (a) The Service Provider shall implement a health, safety and environment management system and project site safety plan that meets or exceeds the requirements of the Contractor's HSEMS and PSSP. If any part of such system or plan are deemed by the Contractor not to comply with the requirements of the Contractor's HSEMS, the Service Provider shall implement the corresponding part(s) of Contractor's HSEMS. The Service Provider shall also implement and comply with the Owner's requirements regarding health, safety and the environment.
- (b) The Service Provider shall comply with all local, provincial and federal Occupational Health and Safety legislation and regulations.
- (c) The Service Provider shall actively promote safe work environments. The Service Provider's site supervisors shall attend all safety meetings as may be scheduled by the Contractor.
- (d) The Service Provider shall cooperate with all safety personnel having jurisdiction at the Project site.
- (e) The Service Provider shall ensure that before any of its personnel begin work on the Project site, the Service Provider has conducted hazard assessments that meet all applicable regulatory requirements, and that its personnel have been advised and fully informed as to the identified hazards and safety absolutes and PPM within the PSSP.
- (f) The Service Provider shall inform its personnel of Project specific emergency response plan for First Aid, evacuations and emergency calls.
- (g) The Service Provider shall take immediate action to correct unsafe behaviours or conditions when reported or observed.
- (h) The Service Provider shall use its own regular system of inspection to detect and correct hazardous conditions, safety absolutes violations and unsafe behaviours or conditions in its own area, provided such system meets or exceeds the system of inspection set out in the Contractor's PSSP.
- (i) The Service Provider shall at all times provide and enforce the use of personal protective equipment required by the applicable workers' compensation authority, and all local, provincial, and federal Regulations.
- (j) The Service Provider must comply with the incident reporting and injury classification standards as detailed in the PSSP.

If the Services are to be performed in the Province of Ontario, this section of the Terms and Conditions is hereby expanded to include the requirements set out in Appendix B to the Subcontract. The Service Provider acknowledges the requirements of Appendix B and agrees to implement and administer these requirements in addition to the procedures listed above.

**19. THIRD PARTY INTELLECTUAL PROPERTY.**

The Service Provider shall pay the royalties and patent license fees required for the performance of the Subcontract. The Service Provider shall hold the Contractor harmless from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Service Provider's performance of the Subcontract which are attributable to an infringement or an alleged infringement of any intellectual property rights by the Service Provider or anyone for whose acts the Service Provider may be liable.

20. **NON-MERGER OF REMEDIES.**

Each of the rights and remedies of the Contractor provided for in this Subcontract shall be in addition to and not in substitution for any of the other rights and remedies of the Contractor provided for in this Subcontract or available to the Contractor at law or in equity and none of such rights and remedies shall be construed so as to limit, prejudice or adversely affect any other of such rights and remedies.

21. **ENTIRE AGREEMENT.**

This Subcontract, together with any documents attached or incorporated, constitutes the entire agreement between the parties, and supersedes all previous communications between them, either oral or written. No modification of this Subcontract and no waiver of rights under this Subcontract shall be valid or binding on the parties unless the same be in writing. Failure of the Contractor to insist upon strict performance of any term or condition of the Subcontract, or to exercise any option in any one or more instances, shall not be construed to be a waiver of any such term, condition or option, or any other covenants or agreements, but the same shall be and remain in full force and effect. The partial or complete invalidity of any one or more conditions or sentences of the Subcontract shall not affect the validity or continuing force and effect of any other condition. The rights and remedies of the Contractor hereunder will survive termination of this Subcontract for any reason.

22. **ENUREMENT.**

This Subcontract shall enure to the benefit of and be binding upon the parties hereto, their successors, executors, administrators or permitted assigns.

23. **QUALITY.**

In addition to performing its Services in accordance with this Subcontract, the Service Provider agrees to implement a formal quality control program and administer the following:

- (a) The Service Provider shall conduct progressive quality control inspections to comply with the Contractor's Quality Management System ("QMS") requirements for the Project. If the Service Provider's inspection program does not meet Contractor's QMS requirements, the Service Provider shall, at its own expense, implement Contractor's inspection program.
- (b) The Service Provider shall provide the Contractor with documentary evidence, in a timely manner, for all quality control inspections conducted for the Project.
- (c) All certification and qualification documents shall be submitted to the Contractor prior to commencing the Services.
- (d) The Service Provider shall provide the Contractor with all applicable manufacturers' and suppliers' recommendations for storage, handling, usage, installation, operation, etc. for all Service Provider-supplied materials and equipment.
- (e) The Service Provider shall assign a quality designate for the Project. This person shall be responsible for implementing Service Provider's quality control program for the Project and shall act as the Service Provider's contact person for all QMS processes.
- (f) The Service Provider shall promote a culture of quality and encourage personnel to identify and report any deficiencies and noncompliance observed.

24. **DOCUMENT CONTROL.**

Where the Contractor utilizes a document control system or other project-specific software or hardware tools, the Service Provider shall ensure all Service Provider personnel use such designated systems or tools.

25. **BUSINESS ETHICS.**

At all times during performance of the Services, the Service Provider and its personnel shall continually observe and promote ethical business practices.